

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention. Applicant would also like to thank the Examiner for taking the time to discuss the present application during a telephone interview on October 30, 2009. The interview was helpful in the preparation of the instant response.

In the Office action, claim 1 was provisionally rejected on the ground of non-statutory obviousness-type double patenting based on claim 1 of co-pending Application No. 10/562,327. In response, a Terminal Disclaimer is filed herewith to overcome the provisional rejection. Accordingly, withdrawal of the provisional rejection is requested.

Further, claims 1 – 11 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Particularly, the Examiner found the claim to be indefinite for failing to meet the objective set forth in the preamble. Applicant respectfully disagrees.

Initially, applicant notes that the claim is directed to a gait generating device and provides a preamble that is descriptive of the device. In this regard, the preamble does not state an "objective" of the claim. As such, the Examiner's stated rationale, which relies on a failure to meet an objective, lacks merit.

With further respect to the rejection, it is noted that 35 U.S.C. 112, second

paragraph, requires that the claim particularly point out and distinctly claim the subject matter which applicant regards as the invention. This requirement is set forth to ensure that the public is apprised of notice as to the boundaries of what constitutes patent infringement. In this vein, the essential inquiry in determining whether a claim satisfies the requirements set forth under 35 U.S.C. 112, second paragraph, is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. As such, a claim is definite if "those skilled in the art would understand what is claimed when the claim is read in light of the specification". Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1576, 1 U.S.P.Q.2d 1081, 1088 (Fed. Cir. 1986). Moreover, if the scope of the claim is clear, then the claim complies with 35 U.S.C. 112, second paragraph.

In view of the legal basis and objectives of the cited statutory section, a claim is only indefinite if the scope thereof is unclear to a person of ordinary skill in the art. Presently, applicant submits that a person of ordinary skill in the art would understand the claim scope. That the claim is silent as to an explicit recitation of a means for generating the desired gait is not believed to confuse the understanding of scope of a person of ordinary skill in the art. Rather, the person of ordinary skill will appreciate the claim scope to be defined by the means for setting a permissible range, determining a provisional motion of a desired gait, and correcting the provisional motion to determine the desired gait.

In interpreting the cited statutory section as a requirement that applicant explicitly recite every feature necessary for the operation of the device, the Examiner has misunderstood the language and proper application of the statute. A rejection under this section is only proper if the Examiner believes that by failing to explicitly

recite a means for generating the desired gait, a person of ordinary skill in the art would fail to understand the scope of the invention. The Examiner's rejection does not appear to be based on any such assertion. Moreover, as discussed above, applicant does not believe this to be the case.

Thus, it is submitted that the rejection under 35 U.S.C. 112, second paragraph, lacks merit. Accordingly, reconsideration and withdrawal of the rejection is requested.

The Examiner also objected to claim 7 for informalities. Specifically, the Examiner found the recitation "the dynamic model" in line 2 of the claim to lack antecedent basis. The Examiner's attention is directed to line 12 - 13 of claim 1, above, wherein a predetermined dynamic model is introduced. Claim 7 has been amended to agree with the recitation in claim 1. Accordingly, the Examiner's grounds for objection have been removed.

In addition to claim 1 – 11, new claim 12 has been added for consideration. Claim 12 depends from claim 1 and further recites a means for generating the desired gait. This amendment is intended to satisfy the Examiner's issue with respect to the rejection under 35 U.S.C. 112, second paragraph. Accordingly, even if the Examiner is in disagreement with the above-presented arguments, claim 12 is considered allowable. Favorable consideration thereof is requested.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. SAT-16368.

Respectfully submitted,

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